

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH V. KAPUSTA,

NO. CIV. S-03-1232 LKK

Plaintiff,

v.

GALE CORPORATION,

O R D E R

Defendant.

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Pending on the court's September 11, 2006 law and motion calendar is plaintiff's motion to amend the scheduling order. The court decides the matter on the papers and without oral argument.

It appears that plaintiff seeks to reopen discovery for the purposes of compelling defendant to produce current financial information necessary to calculate damages. Specifically, plaintiff seeks financial records that were allegedly created while the above captioned case was on appeal to the Federal Circuit.

According to the court's scheduling order, issued on March 21, 2006, discovery in this case is closed (with the exception of expert disclosures). Nonetheless, on May 17, 2006, plaintiff filed

1 a motion to compel, which was heard before Magistrate Judge  
2 Mueller. By minute order, Judge Mueller denied the motion and  
3 cited to the court's scheduling order, which states that all  
4 nonexpert discovery is closed.

5 In both it's motion and reply brief plaintiff fails to set  
6 forth any reason for why this court should disturb Judge Mueller's  
7 ruling. Moreover, to the extent that plaintiff seeks to amend the  
8 scheduling order pursuant to Federal Rule of Civil Procedure 16  
9 (b), plaintiff has failed to set forth any good cause for why  
10 discovery should be reopened. See Johnson v. Mammoth Recreations,  
11 Inc., 975 F.3d 604 (9th Cir. 1992).


12 Accordingly, the court orders as follows:

13 1. Plaintiff's motion to amend the scheduling order is  
14 DENIED.

15 2. The hearing set for September 11, 2006 is hereby  
16 VACATED.

17 IT IS SO ORDERED.

18 DATED: September 6, 2006.

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22 LAWRENCE K. KARLTON  
23 SENIOR JUDGE  
24 UNITED STATES DISTRICT COURT  
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